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LKGlobal (EchoStar) 7010 E. COCHISE ROAD SCOTTSDALE, AZ 85253			EXAMINER ALATA, YASSIN	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* STEWART MARLOW, MATTHEW LEWIS,  
and ANDREW JOHNSON

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Appeal 2016-007891  
Application 14/606,183<sup>1</sup>  
Technology Center 2400

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Before JOHN A. EVANS, CATHERINE SHIANG, and  
NORMAN H. BEAMER, *Administrative Patent Judges*.

EVANS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner's Final Rejection of Claims 1–4, all claims pending in the application. Br. 4. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.<sup>2</sup>

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<sup>1</sup> The Appeal Brief identifies EchoStar U.K. Holdings Limited, as the real party in interest. App. Br. 2.

<sup>2</sup> Rather than reiterate the arguments of Appellants and the Examiner, we refer to the Appeal Brief (filed November 30, 2015, "App. Br."), the Examiner's Answer (mailed June 17, 2016, "Ans."), the Final Action (mailed August 13, 2015, "Final Act."), and the Specification (filed January 27, 2015, "Spec.") for their respective details.

## STATEMENT OF THE CASE

The claims relate to projection of holographic images. *See* Abstract.

## INVENTION

An understanding of the invention can be derived from a reading of Claim 1, the only independent claim in the application, which is reproduced below with some formatting added:

1. A method for providing an advertisement image, comprising:

receiving a program service transmission at a receiver, the program service transmission having a plurality of channels;

outputting at least one channel of the plurality of channels from the receiver for display on a display device, wherein the at least one channel includes a display of a product; and

concurrently with the display of the at least one product, outputting a holographic image of the product remote from the display device.

## *References and Rejections*

The Examiner relies upon the prior art as follows:

Windsor, <i>et al.</i> ,	US 6,512,607 B1	Jan 28, 2003
Pan	US 2012/0042344 A1	Filed Aug. 14, 2010

The claims stand rejected as follows:

Claims 1–4 stand rejected under 35 U.S.C. § 101 as directed to a non-statutory, abstract idea. Final. Act. 3–4.

Claims 1–4 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Pan and Windsor. Final. Act. 4–6.

## ANALYSIS

We have reviewed the rejections of Claims 1–4 in light of Appellants’ arguments that the Examiner erred. We have considered in this decision only those arguments Appellants actually raised in the Briefs. Any other arguments which Appellants could have made but chose not to make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). We are not persuaded that Appellants identify reversible error. Upon consideration of the arguments presented in the Appeal Brief and Reply Brief, we agree with Appellants that the claims recite statutory subject matter under 35 U.S.C. §101. However, we agree with the Examiner that all the pending claims are unpatentable under 35 U.S.C. §103. With respect to the obviousness rejections, we adopt as our own the findings and reasons set forth in the rejection from which this appeal is taken and in the Examiner’s Answer, to the extent consistent with our analysis below. We provide the following explanation to highlight and address specific arguments and findings primarily for emphasis. We consider Appellants’ arguments *seriatim*, as they are presented in the Appeal Brief, pages 12–16.

### CLAIMS 1–4: NON-STATUTORY, ABSTRACT IDEA

Claim 1 recites, *inter alia*, “outputting a holographic image of the product remote from the display device.”

The Examiner finds “outputting a holographic image can be done without a machine. For example, it can be done by hanging a paper with a string in space, wherein the paper has an image of a product.” Final Act. 2.

Appellants contend Claim 1 recites limitations, including limitations directed to outputting a holographic image, which require the participation

of a machine. Br. 13. Appellants argue the Examiner fails to cite any of the *Mayo* categories of ineligible subject matter. *Id.* Appellants discuss various physical mechanisms to produce the claimed holographic images. *Id.* (citing Spec., ¶ 21).

The Examiner finds “outputting a holographic image” is an abstract idea, absent proper structure. Ans. 4.

The Examiners finding that a hologram may be produced equivalently “by hanging a paper with a string in space, wherein the paper has an image of a product” (Final Act. 2) is not reasonable. In optics, a hologram is a “three-dimensional image formed by interference by a coherent laser beam and the light scattered by the object being imaged, and recorded on a high-resolution photographic plate; viewable when illuminated with the same light that formed the image.” Academic Press Dictionary of Science and Technology, p. 1036 (1992).

We find Appellants’ Specification provides sufficient disclosure such that a person of ordinary skill in the art would understand the claims were supported by the required structure to perform the method and thus, to remove the claims from the realm of abstract ideas. We agree with Appellants that the claims do not relate to any of the *Mayo* categories of ineligible subject matter.

#### CLAIMS 1–4: OBVIOUSNESS OVER PAN AND WINDSOR

Claim 1 recites, *inter alia*, “outputting a holographic image of the product remote from the display device.” Appellants contend this limitation is supported by the disclosure of Figure 3 and accompanying text. Br. 14. Appellants argue that in contrast to the claimed invention, Windsor’s

“holographic overlay” is displayed “proximate a display screen of a wireless communications device.” Br. 15.

The Examiner finds Pan discloses a digital TV system wherein a first image is displayed on a conventional TV monitor and second, related image is displayed on a user’s cellphone. Ans. 5–6. The Examiner finds Windsor teaches a wireless communication device having a display screen with a holographic overlay. *Id.* at 6. The Examiner finds the Pan-Windsor combination teaches outputting a holographic image of a product remote from the display device. *Id.*

Appellants did not file a reply brief.

Appellants separately traverse each of the Pan and Windsor references, but do not traverse the combined teachings as set forth by the Examiner. “[O]ne cannot show non-obviousness by attacking references individually where . . . the rejections are based on combinations of references.” *In re Keller*, 642 F.2d 413, 426 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091 (Fed.Cir.1986). Appellants fail to persuade us the Examiner has erred.

#### DECISION

The rejection of Claims 1–4 under 35 U.S.C. 101 is REVERSED.

The rejection of Claims 1–4 under 35 U.S.C. § 103 is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED